

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs at Knoxville December 15, 2009

STATE OF TENNESSEE v. WILLIAM STEVEN WEAVER

Appeal from the Criminal Court for Davidson County
Nos. 2005-D-3227, 2006-A-38, 2006-A-98 Steve Dozier, Judge

No. M2009-00299-CCA-R3-CD - Filed March 2, 2010

The Defendant, William Steven Weaver, appeals from the trial court's revocation of his community corrections sentences and resentencing to increased terms for convictions of driving on a suspended license, resisting arrest, and two counts of felony evading arrest. The Defendant argues that the trial court lacked jurisdiction to revoke and resentence him in case 2006-A-38 because his sentence expired before the revocation warrant was issued. The State agrees, as do we. The judgment of the trial court with respect to case number 2006-A-38 is reversed. The judgments with respect to cases 2005-D-3227 and 2006-A-98 are affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Reversed
in Part, Affirmed in Part**

JOSEPH M. TIPTON, P.J., delivered the opinion of the Court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Dawn Deaner, District Public Defender, Emma Rae Tennent (on appeal), Aimee Solway (at trial), Assistant Public Defenders, for the appellant, William Steven Weaver.

Robert E. Cooper, Jr., Attorney General and Reporter; Clark B. Thornton, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Jennifer Erin McMillen, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The Defendant pled guilty on March 2, 2006, as follows:

Case	Offense	Class	Sentence	Range	Consecutive/ Concurrent	Manner of Service
2005-D-3227 Count 1	Driving on Suspended Licence	B misdemean.	6 months	n/a	consecutive to 2006-A- 98	probation
2005-D-3227 Count 2	Resisting Arrest	B misdemean.	6 months	n/a	concurrent with Count 1 of 2005-D- 3227	probation
2006-A-38	Evading Arrest	D felony	4 years	II		community corrections
2006-A-98	Evading Arrest	D felony	2 years	I	consecutive to 2006-A- 38	community corrections

The Defendant's effective sentence was six years and six months.

A violation warrant was issued on June 22, 2006, and the trial court found the Defendant in violation on September 25, 2006, revoked the community corrections and probation sentences, and ordered the Defendant to serve his sentences in confinement. After a period of confinement, the court allowed the Defendant to return to community corrections. On October 23, 2008, a violation warrant was issued which alleged that the Defendant had violated a term of his community corrections sentence. The Defendant conceded the violation in November 2008, and the matter came before the trial court for resentencing in December 2008. The court increased the Defendant's sentences in the two felony cases to six years in case 2006-A-38 and to four years in case 2006-A-98, for an effective sentence of ten years. The court also revoked the Defendant's sentences in the two misdemeanor cases and ordered that he serve these sentences concurrently to each other and consecutively to the felony cases. The court entered its order on January 7, 2009, and the Defendant filed his notice of appeal on February 4, 2009.

On February 12, 2009, the trial court conducted a hearing on the Defendant's January 12, 2009 motion for correction of sentence. The Defendant alleged that his four-year sentence in case 2006-A-38 expired before the revocation proceedings were commenced and that the trial court erred in increasing his classification to Range II when resentencing him in case 2006-A-98. With respect to the allegation regarding case 2006-A-38, the attorneys

for the Defendant and the State informed the trial court that they had been advised by the Department of Correction that the Defendant's sentence had expired. The court requested that the Defendant provide documentation from the Department of Correction to this effect. According to an affidavit of defense counsel that is in the record, this documentation was provided to the trial court. This court ordered the record on appeal to be supplemented with the affidavit, certified by the trial court clerk. Although no certification was made, the record was supplemented with the affidavit of Candace J. Whisman, Director of Sentence Management Services for the Department of Correction, without a file stamp but without objection from the State. In any event, the trial court entered an order on March 13, 2009, in which it granted the Defendant's motion with respect to case 2006-A-98, modifying the Range II classification to Range I. The court denied the motion with respect to case 2006-A-38, holding that the Defendant's sentence had not expired. The court considered the length of the Defendant's original effective sentence of six years and six months that was imposed in 2006 "would not expire until 2012." It also noted, "At the time the resentencing order was entered, only approximately two years, ten months, and six days had passed since the entry of the six year plea agreement."

On appeal, the Defendant argues that the trial court was without jurisdiction to revoke his sentence in case 2006-A-38 because that sentence had expired. The State concedes that the Defendant's argument has merit. We agree.

A trial court may revoke a suspended sentence upon its finding by a preponderance of the evidence that a violation of the conditions of release has occurred. T.C.A. § 40-35-311(e) (2006) (probation revocation); see T.C.A. § 40-36-106(e)(3)(B) (stating that community correction revocation proceedings shall be conducted pursuant to T.C.A. § 40-35-311). A trial court, upon revoking a community corrections sentence, "may resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed" T.C.A. § 40-36-106(e)(4).

The trial court is authorized to take such action "at any time within the maximum time which was directed and ordered by the court for such suspension." T.C.A. § 40-35-310(a). If consecutive sentences are involved, the court may revoke the suspended sentence in only those cases in which the term of the individual sentence had not expired before filing of the revocation warrant. State v. Anthony, 109 S.W.3d 377, 381-82 (Tenn. Crim. App. 2001).

Code section 40-28-129 confers on the Department of Correction the responsibility of "calculating the sentence expiration date and the earliest release date of any felony offender sentenced to the department of correction or any felony offenders sentenced to confinement in a county jail or workhouse for one (1) or more years." T.C.A. § 40-28-129.

In the present case, there is no dispute with the Department of Correction's determination that based upon the calculation of the Defendant's time served with all applicable credits, the sentence in case 2006-A-38 had expired. The affidavit of Director Whisman states that following the 2006 revocation, the Defendant was placed in the custody of the Department and that the expiration date of his sentence after application of credits occurred April 29, 2008. The trial court erred in assuming jurisdiction in the revocation proceedings of this expired sentence.

In consideration of the foregoing and the record as a whole, the judgment of the trial court in case 2006-A-38 is reversed. The amended judgment in case 2006-A-38 which purports to sentence the Defendant to six years is vacated, and the judgment in case 2006-A-38 sentencing him to four years is reinstated. The judgments with respect to cases 2005-D-3227 and 2006-A-98 are affirmed.

JOSEPH M. TIPTON, PRESIDING JUDGE